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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

14 MELYNDA SINGH, NARCISO
15 SANTOR, ANNA SIBAL, JAY
16 SINSON, AND ROBERT
17 TAJANLANGIT, individuals, on
18 behalf of themselves, and on behalf of
19 all persons similarly situated,

20 Plaintiff,

21 vs.

22 TOTAL RENAL CARE, INC., a
23 California Corporation; DVA RENAL
24 HEALTHCARE, INC., a Corporation,
25 and Does 2 through 50, Inclusive,

26 Defendants.

CASE No. **CGC-16-550847**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS SETTLEMENT**

Hearing Date: August 14, 2019

Hearing Time: 9:30 a.m.

Reservation No. 07170814-05

Dept.: 302

Judge: Hon. Ethan P. Schulman

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1 **I. INTRODUCTION**

2 Plaintiffs Melynda Singh, Narcisso Santor, Anna Sibal, Jay Sinson, and Robert Tajanlangit
3 (“Plaintiffs”) respectfully submit this memorandum in support of the unopposed motion for preliminary
4 approval of the proposed class action settlement with Defendants Total Renal Care, Inc., DVA Renal
5 Healthcare, Inc., DaVita Inc., RTC-California, Continental Dialysis, Inc., DaVita NephMed of CA,
6 Kidney Care RX, Inc., Knickerbocker Dialysis, Inc., Phys Dialysis Acquisitions, Renal Life Link, Inc.,
7 RMS LifeLink, Inc., RTC-Illinois, RTC-MidAtlantic, RTC-Southeast, RTC-West, Village Health DM,
8 LLC, GDC Resources, LLC, and Patient Pathways (“Defendants”), and seek entry of an order: (1)
9 certifying the settlement class and preliminarily approving the proposed settlement of this class action
10 with Defendants; (2) approving the form and method for providing class-wide notice; (3) directing that
11 notice of the proposed settlement be given to the class; and, (4) scheduling a final approval hearing date
12 to consider Plaintiffs’ motion for final approval of the proposed settlement and Plaintiffs’ motion for
13 attorneys’ fees and expenses.

14 Plaintiffs and Defendants (collectively the “Parties”) have reached a full and final settlement of
15 the above-captioned action, which is embodied in the Class Settlement Agreement (“Agreement”) filed
16 concurrently with the Court. A copy of the fully executed Agreement is attached as Exhibit #1 to the
17 Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith.

18 As consideration for this Settlement, the Gross Settlement Amount is Eight Million Dollars
19 (\$8,000,000) to be paid by Defendant. This payment will settle all issues pending in the litigation
20 between the Parties, including all settlement payments to the Participating Class Members, attorneys’
21 fees, litigation expenses, the Settlement Administrator’s fees and expenses, the PAGA payment, and the
22 Class Representative Service Payments. The Gross Settlement Amount does not include the employer’s
23 share of payroll taxes which will be separately paid by Defendant. The Settlement is all-in with no
24 reversion to Defendant and no need to submit a claim form. Decl. Nordrehaug at ¶3.

25 On August 30, 2017, the Parties participated in an all-day mediation presided over by Louis
26 Marlin, Esq., a respected mediator of wage and hour class actions, but were unable to agree to a
27 settlement. On January 22, 2019, the Parties participated in a second mediation before Louis Marlin.
28 At the conclusion of the mediation, the Parties reached an agreement to settle the Action based on a

mediator's proposal, the basic terms of which were then memorialized in the form of a Memorandum of Understanding. The Parties then prepared the Agreement which was signed by the Parties and is now presented to this Court for preliminary approval. Decl. Nordrehaug at ¶5.

The Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a substantial monetary payment, and there are substantial litigation and class-certification risks. Therefore, Plaintiffs respectfully request that this Court grant preliminary approval of the Agreement and enter the proposed order submitted herewith.

II. DESCRIPTION OF THE SETTLEMENT

The Gross Settlement Amount is Eight Million Dollars (\$8,000,000). (Agreement at ¶ III(A).) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the Settlement Shares to the Class; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Settlement Administration Expenses; (4) Class Representative Service Payments to the Plaintiffs; and (5) the LWDA Payment to the State of California. (Agreement at ¶ III(A).) The Gross Settlement Amount does not include Defendant's share of payroll taxes. (Agreement at ¶ III(A).) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement at ¶ III(A).) Decl. Nordrehaug at ¶15.

Defendants shall fund the Gross Settlement Amount and the amount necessary to pay Defendant's share of payroll taxes within fifteen (15) days of the Effective Date. (Agreement at ¶ III(E)(9).) Within fifteen (15) days after Defendants fund the Gross Settlement Amount, the Settlement Administrator will pay the Settlement Shares to Participating Class Members and make the other Court-approved distributions. (Agreement at ¶ III(E)(9).) Decl. Nordrehaug at ¶16.

The Net Settlement Amount shall equal the net amount available for Settlement Shares to Participating Class Members after deducting the Class Representative Service Payments, the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the LWDA Payment, and the Settlement Administration Expenses from the Gross Settlement Amount. (Agreement at ¶ I(S).) The Net Settlement Amount will be distributed among the Class Members who do not timely request exclusion ("Participating Class Members"). (Agreement at ¶¶ I(U) and III(C)(1).) The Settlement Share for each Participating Class Member will be calculated by (a) dividing the Net Settlement Amount by

1 the total number of workweeks worked for all Participating Class Members that occurred during the
2 Class Period and (b) multiplying the result by each individual Participating Class Member's workweeks
3 worked that occurred during the Class Period. (Agreement at ¶ III(C)(2).) Decl. Nordrehaug at ¶17.

4 Class Members may choose to opt-out of the Settlement by following the directions in the Class
5 Notice. (Agreement at ¶ III(E)(3), Ex. A.) All Class Members who do not "opt out" will be deemed
6 Participating Class Members who will be bound by the Settlement and will be entitled to receive a
7 Settlement Share. (Agreement at ¶ III(E)(3).) Finally, the Notice will advise the Class Members of
8 their right to object to the Settlement. (Agreement at ¶ III(E)(3), Ex. A.) Decl. Nordrehaug at ¶18.

9 A Participating Class Member must cash his or her Settlement Share check within 180 days after
10 it is mailed. (Agreement at ¶ III(E)(10).) Any settlement checks not cashed within 180 days will be
11 voided and the funds from such uncashed checks will be paid to the Controller of the State of California
12 to be held pursuant to the Unclaimed Property Law in the name of the Participating Class Member.
13 (Agreement at ¶ III(E)(10).) The Parties agree that this disposition results in no "unpaid residue" under
14 California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out. Decl.
15 Nordrehaug at ¶19.

16 After receiving bids from vendors, the Parties have agreed to use KCC Class Action Services
17 as the Settlement Administrator for the Settlement. (Agreement at ¶ III(D).) Payment to the Settlement
18 Administrator from the Gross Settlement Amount shall be made for the expenses of effectuating and
19 administering the Settlement. (Agreement at ¶ III(D).) The Settlement Administrator shall receive
20 payment for services in an amount not to exceed \$82,000, which was the lowest bid received.
21 (Agreement at ¶ III(B)(4).) Decl. Nordrehaug at ¶20.

22 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
23 to exceed \$2,666,666, which is one-third of the Gross Settlement Amount, as the Class Counsel Fees
24 Payment. (Agreement at ¶ III(B)(2).) Class Counsel will also be allowed to apply separately for an
25 award of Class Counsel Litigation Expenses Payment in an amount not to exceed \$35,000. (Agreement
26 at ¶ III(B)(2).) Subject to Court approval, the Agreement provides payment of no more than \$15,000
27 as a Class Representative Service Payment to plaintiff Melynda Singh and awards of not more than
28 \$10,000 each as Class Representative Service Payments to plaintiffs Narcisso Santor, Anna Sibal, Jay

1 Sinson and Robert Tajanlangit. (Agreement at ¶ III(B)(1).) Decl. Nordrehaug at ¶21.

2 Subject to Court approval, One Hundred Thousand Dollars (\$100,000) will be paid from the
3 Gross Settlement Amount for PAGA penalties under PAGA, Labor Code Section 2698 *et seq.* Pursuant
4 to the express requirements of Labor Code § 2699(i), the PAGA Penalty Payment shall be allocated as
5 follows: \$75,000 to the LWDA (the "LWDA Payment") as the LWDA's share of the settlement of civil
6 penalties pursuant to the PAGA, and \$25,000 to the Net Settlement Amount for distribution to the
7 Participating Class Members. (Agreement at ¶ III(B)(3).) Decl. Nordrehaug at ¶22.

8 **III. CASE BACKGROUND**

9 On March 8, 2016, Plaintiffs filed a Complaint against defendant Total Renal Care, Inc. in the
10 Superior Court of the State of California, County of San Francisco on behalf of themselves and a
11 putative class. The Complaint alleged claims for: (1) unfair competition in violation of Cal. Bus & Prof.
12 Code §§ 17200, *et seq.*; (2) failure to pay overtime wages in violation of Cal. Labor Code § 510; (3)
13 failure to provide accurate itemized statements in violation of Cal. Lab. Code § 226; (4) failure to
14 provide wages at termination in violation of Cal. Lab. Code § 203; (5) wrongful termination of plaintiff
15 Melynda Singh in violation of public policy; and, (6) violation of California Labor Code § 1102.5(c)
16 with respect to plaintiff Melynda Singh. Decl. Nordrehaug at ¶7.

17 On June 29, 2016, Plaintiff filed a First Amended Complaint adding a claim under the Private
18 Attorneys General Act, Cal. Labor Code §§ 2698 *et seq.* ("PAGA"), based upon the alleged Labor Code
19 violations. On January 4, 2018, Plaintiffs filed an Amendment to Complaint Naming Doe 1 and
20 designated Doe 1 as DVA Renal Healthcare, Inc. On May 3, 2018, Plaintiffs filed a Second Amended
21 Complaint including as defendants Total Renal Care, Inc. and DVA Renal Healthcare, Inc. Decl.
22 Nordrehaug at ¶8.

23 On June 7, 2018, defendants Total Renal Care, Inc. and DVA Renal Healthcare, Inc. filed an
24 Answer to Plaintiffs' Second Amended Complaint generally denying all claims and asserting 31
25 affirmative defenses. As part of the Settlement, the Parties have agreed to stipulate to the filing of Doe
26 amendments to the Second Amended Complaint adding as Doe defendants DaVita Inc., RTC-California,
27 Continental Dialysis, Inc., DaVita NephMed of CA, Kidney Care RX, Inc., Knickerbocker Dialysis, Inc.,
28 Phys Dialysis Acquisitions, Renal Life Link, Inc., RMS LifeLink, Inc., RTC-Illinois, RTC-MidAtlantic,

1 RTC-Southeast, RTC-West, Village Health DM, LLC, GDC Resources, LLC, and Patient Pathways.
2 Decl. Nordrehaug at ¶9.

3 Over the three years of litigation, the Parties engaged in extensive written discovery including
4 production of documents, class data, and other information, allowing for the full and complete analysis
5 of liabilities and defenses to the claims in this Action. The discovery obtained by Plaintiffs included:
6 (1) Class Data showing all employees and their employment dates; (2) Payroll data for Class Members,
7 which included overtime and bonus information; (3) Defendants' time keeping data concerning all hours
8 worked and recorded meal periods for Class Members; (4) Defendants' employee handbooks applicable
9 for the relevant periods, which outlined the wage and hour policies; (5) employment files for the
10 Plaintiffs; and, (6) samples of wage statements provided by Defendants to employees. Following this
11 discovery, Plaintiffs and Defendants agreed to discuss early resolution of the Action through a
12 mediation. Decl. Nordrehaug at ¶10.

13 Prior to mediation, the Parties engaged in investigation and the exchange of documents and
14 information in connection with the Action. As part of this process, Defendants provided documents and
15 information to Class Counsel to review and analyze. On August 30, 2017, the Parties participated in an
16 all-day mediation presided over by Louis Marlin, a notable labor and employment attorney and respected
17 mediator of wage and hour class actions. During the mediation, each side, represented by its respective
18 counsel, were unable to agree to settle the Action. The negotiations were arm's length and contentious.
19 Decl. Nordrehaug at ¶11.

20 After further litigation, on January 22, 2019, the Parties participated in a second mediation before
21 Louis Marlin. At the conclusion of the second mediation, the mediator made a mediator's proposal
22 which was subsequently accepted by the Parties in the form of a Memorandum of Understanding. The
23 Parties continued to negotiate the terms of the settlement and prepared the final Agreement which was
24 signed by the Parties and is now presented to this Court for preliminary approval. Decl. Nordrehaug at
25 ¶12.

26 Accordingly, for purposes of this Settlement, the "Class" is defined as "all individuals who are
27 or previously were employed by one or more of the Defendants in California at any time during the
28 Class Period and who were classified as non-exempt." (Agreement at ¶ I(B).) The Class Period is from

1 March 8, 2012 through May 6, 2019. (Agreement at ¶ I(I).) The Released Class Claims are limited to
2 the claims alleged in the Action or which could have been alleged based upon the facts and theories pled
3 in the Action. (Agreement at ¶ III(F)(1).)

4 Although a settlement has been reached, Defendants deny any liability or wrongdoing of any
5 kind associated with the claims alleged in the Action and further denies that, for any purpose other than
6 settlement, this action is appropriate for class treatment. Defendants contend, among other things, that
7 it has correctly compensated the Class Members and complied at all times with the California Labor
8 Code, applicable Wage Order, and all other laws and regulations. Further, Defendants contend that class
9 certification would be inappropriate for any reason other than for settlement. Decl. Nordrehaug, ¶ 13.

10 Plaintiffs contend that Defendants violated California wage and hour laws. Plaintiffs further
11 contends that the Action is appropriate for class certification on the basis that the Plaintiffs' claims meet
12 the requisites for class certification. Without admitting that class certification is proper, Defendants
13 have stipulated that the above Class may be certified for settlement purposes only. (Agreement at ¶
14 II(M).) The Parties agree that certification for settlement purposes is not an admission that class
15 certification would be proper if the class certification issue were litigated. Further, the Agreement is not
16 admissible in this or any other proceeding as evidence that the Class could be certified absent a
17 settlement. Solely for purposes of settling the Action, the Parties stipulate and agree that the requisites
18 for establishing class certification with respect to the Class are satisfied. Decl. Nordrehaug ¶ 13.

19 Class Counsel has conducted a thorough investigation into the facts of the class action. Over the
20 course of three years, Class Counsel has diligently evaluated the Class Members' claims against
21 Defendants. Both Plaintiffs and Defendants engaged in written discovery, which included the
22 production of thousands of pages of documents. Prior to the settlement negotiations, counsel for
23 Defendants provided Class Counsel with access to information for the Class. In addition, Class Counsel
24 previously negotiated settlements with other employers in actions involving nearly identical issues and
25 analogous defenses. Based on the foregoing data and their own independent investigation, evaluation
26 and experience, Class Counsel believes that the settlement with Defendants on the terms set forth in the
27 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known
28 facts and circumstances, including the risk of significant delay, defenses asserted by Defendants, and

1 potential appellate issues. Decl. Nordrehaug at ¶ 14.

2
3 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO GRANT PRELIMINARY APPROVAL**

4 When a proposed class-wide settlement is reached, the settlement must be submitted to the court
5 for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87.
6 California "[p]ublic policy generally favors the compromise of complex class action litigation."
7 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*
8 *Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
9 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
10 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert.
11 denied, 459 U.S. 1217 (1983)).

12 Preliminary approval is the first of three steps that comprise the approval procedure for
13 settlements of class actions. The second step is the dissemination of notice of the settlement to all Class
14 Members. The third step is a final settlement approval hearing, at which evidence and argument
15 concerning the fairness, adequacy, and reasonableness of the settlement may be presented and Class
16 Members may be heard regarding the settlement. See *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
17 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

18 The primary question presented on an application for preliminary approval of a proposed class
19 action settlement is whether the proposed settlement is "within the range of possible approval." *Manual*
20 *for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir.
21 1982).¹ Preliminary approval is merely the prerequisite to giving notice so that "the proposed
22 settlement... may be submitted to members of the prospective Class for their acceptance or rejection."
23 *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is "a
24 presumption of fairness . . . where . . . [a] settlement is reached through arms-length bargaining."

25
26 ¹ California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d
27 800, 821 (1971). "It is well established that in the absence of relevant state precedents trial courts are
28 urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for
conducting class actions." *Frazier v. City of Richmond*, 184 Cal. App.3d 1491, 1499 (1986), citing
Green v. Obledo, 29 Cal.3d 126, 145-146 (1981).

1 *Wershba*, 91 Cal. App. 4th at 245 (citation omitted); see also *Cho v. Seagate Tech. Holdings, Inc.*, 177
2 Cal. App. 4th 734, 742-45 (2009) (upholding trial court's determination that settlement was "fair,
3 reasonable and adequate" where the settlement "provided valuable benefits to the class ... that were
4 'particularly valuable in light of the risks plaintiff would have faced if she proceeded to litigate her
5 case."); *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate question of whether the proposed
6 settlement is fair, reasonable and adequate is made after notice of the settlement is given to the Class
7 Members and a final settlement hearing is held by the Court.

8 **A. The Role Of The Court In Preliminary Approval Of A Class Action Settlement**

9 The approval of a proposed settlement of a class action suit is a matter within the broad
10 discretion of the trial court. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-235 (2001);
11 *Dunk*, 48 Cal.App.4th 1794. Preliminary approval does not require the trial court to answer the ultimate
12 question of whether a proposed settlement is fair, reasonable and adequate. That final determination is
13 made only after notice of the settlement has been given to the class members and after they have been
14 given an opportunity to voice their views of the settlement or to be excluded from the settlement. 3B J.
15 Moore, *Moore's Federal Practice* §§23.80 - 23.85 (2003).

16 In considering a potential settlement for preliminary approval purposes, the trial court does not
17 have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
18 dispute, and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk*,
19 *supra*, 48 Cal.App. 4th at 1807. The Ninth Circuit explains, "the very essence of a settlement is
20 compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice*, 688
21 F.2d at 624. The question whether a proposed settlement is fair, reasonable and adequate necessarily
22 requires a judgment and evaluation by the attorneys for the parties based upon a comparison of "the
23 terms of the compromise with the likely rewards of litigation." *Weinberger v. Kendrick*, 698 F.2d 61,
24 73 (2d Cir. 1982), *cert. denied* 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders*
25 *of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the
26 settlement, the amount is "not to be judged against a hypothetical or speculative measure of what might
27 have been achieved by the negotiators." *Officers for Justice*, 688 F.2d at 625, 628.

28 With regard to class action settlements, the opinions of counsel should be given considerable

weight both because of counsel's familiarity with this litigation and previous experience with cases such as these. *Officers for Justice*, 688 F.2d at 625; *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988); *Weinberger*, 698 F.2d at 74. For example, in *Lyons v. Marrud, Inc.*, [1972-1973 Transfer Binder] Fed. Sec. L. Rep. (CCH) Paragraph 93,525 (S.D.N.Y. 1972), the court noted that "[e]xperienced and competent counsel have assessed these problems and the probability of success on the merits.... The parties' decision regarding the respective merits of their position has an important bearing." *Id.* at ¶ 92,520. "The recommendations of plaintiffs' counsel should be given a presumption of reasonableness." *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979). As a result, courts hold that the recommendation of counsel is entitled to significant weight. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

B. Factors To Be Considered In Granting Preliminary Approval

A number of factors are to be considered in evaluating a settlement for purposes of preliminary approval. In determining whether to grant preliminary approval, the court considers whether the "(1) the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives or segments of the class, and (4) falls within the range of possible approval." *In re Tableware Antitrust Litig.*, 484 F.Supp. 2d 1078, 1079 (N.D. Cal. 2007). No one factor should be determinative, but rather all factors should be considered. The analysis has been summarized as follows:

If the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.

Manual of Complex Litigation, Second § 30.44, at 229.

Here, the Settlement meets all of these criteria for preliminary approval.

1. The Settlement is the Product of Serious, Informed and Arm's Length Negotiations by Experienced Counsel

This settlement is the result of extensive and hard fought litigation as well as negotiations before an experienced and well-respected mediator. Defendants have expressly denied and continue to deny

1 any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class
2 Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class
3 Claims of the Class in accordance with this Settlement.²

4 Class Counsel are experienced and qualified to evaluate the class claims, the viability of the
5 defenses asserted, and the risks and benefits of trial and settlement, and Class Counsel are particularly
6 experienced in wage and hour employment law class actions, as Class Counsel has previously litigated
7 and certified similar claims against other employers. Decl. Nordrehaug at ¶31. The view of qualified
8 and well-informed counsel that a class action settlement is fair, adequate, and reasonable is entitled to
9 significant weight. See *Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial court "may
10 and undoubtedly should continue to place reliance on the competence and integrity of counsel, the
11 involvement of a qualified mediator, and the paucity of objectors to the settlement."); *Dunk*, 48 Cal.
12 App. 4th at 1802.

13 The Parties attended two separate mediation sessions with Louis Marlin, who is a respected and
14

15 ² Released Class Claims are defined as: "all causes of action and factual or legal theories that were
16 alleged in the operative complaint or reasonably could have been alleged based on the facts and legal
17 theories contained in the operative complaint, including all of the following claims for relief that
18 occurred during the Class Period: (a) failure to pay all regular wages, minimum wages and overtime
19 wages due; (b) failure to properly calculate the regular rate for overtime pay or meal period or rest
20 period premium pay; (c) failure to provide proper meal periods, and to properly provide premium pay
21 in lieu thereof; (d) failure to provide proper rest periods, and to properly provide premium pay in lieu
22 thereof; (e) failure to provide complete, accurate or properly formatted wage statements; (f) waiting
23 time penalties that could have been premised on the claims, causes of action or legal theories of relief
24 described above or any of the claims, causes of action or legal theories of relief pleaded in the operative
25 complaint; (g) unfair business practices that could have been premised on the claims, causes of action
26 or legal theories of relief described above or any of the claims, causes of action or legal theories of
27 relief pleaded in the operative complaint; (j) all claims under the California Labor Code Private
28 Attorneys General Act of 2004 that could have been premised on the claims, causes of action or legal
theories described above or any of the claims, causes of action or legal theories of relief pleaded in the
operative complaint; (k) any other claims or penalties under the wage and hour laws pleaded in the
Action; and (l) all damages, penalties, interest and other amounts recoverable under said claims, causes
of action or legal theories of relief pleaded in the operative complaint. Defendants shall be entitled to
a release of the Released Class Claims which occurred during the Class Period only during such time
that the Class Member was classified as non-exempt. The Released Class Claims expressly exclude all
other claims, including claims for vested benefits, wrongful termination, unemployment insurance,
disability, social security, workers' compensation, claims while classified as exempt and claims outside
of the Class Period." (Agreement at ¶ III(F)(1).)

1 experienced mediator of wage and hour class action lawsuits. In preparation for the mediation,
2 Defendants provided Class Counsel with necessary information for the members of the Class, including
3 time data, payroll data and data concerning the composition of the Class. Plaintiffs analyzed the data
4 with the assistance of damages expert, DM&A, and prepared and submitted a mediation brief to
5 Mediator Marlin. After these two separate mediations conducted over the course of two years, the
6 Parties eventually accepted a mediator's proposal and agreed to this Settlement, which was accepted in
7 light of the uncertainties of protracted litigation. The final settlement terms were negotiated and set forth
8 in the Agreement now presented for this Court's approval. Decl. Nordrehaug ¶ 5. Importantly, Plaintiff
9 and Class Counsel believe that this Settlement is fair, reasonable and adequate.

10 As consideration for this Settlement, the total amount to be paid by Defendant is Eight Million
11 Dollars (\$8,000,000.00) (the "Gross Settlement Amount"). The Settlement is all-in with no reversion
12 to Defendant and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

13 Class Counsel has conducted a thorough investigation into the facts of the class action. Over the
14 course of three years, Class Counsel has diligently evaluated the Class Members' claims against
15 Defendants. Both Plaintiffs and Defendants engaged in written discovery, which included the
16 production of thousands of pages of documents. Prior to the settlement negotiations, counsel for
17 Defendants provided Class Counsel with access to information for the Class. In addition, Class Counsel
18 previously negotiated settlements with other employers in actions involving nearly identical issues and
19 analogous defenses. Based on the foregoing data and their own independent investigation, evaluation
20 and experience, Class Counsel believes that the settlement with Defendants on the terms set forth in the
21 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known
22 facts and circumstances, including the risk of significant delay, defenses asserted by Defendants, and
23 potential appellate issues. Decl. Nordrehaug at ¶ 14.

24 Plaintiffs and Class Counsel recognize the expense and length of continuing to litigate and trying
25 this Action against Defendants through possible appeals which could take several years. Class Counsel
26 has also taken into account the uncertain outcome and risk of litigation, especially in complex class
27 actions such as this Action. Class Counsel is also mindful of and recognize the inherent problems of
28 proof under, and alleged defenses to, the claims asserted in the Action. Based upon their evaluation,

1 Plaintiffs and Class Counsel have determined that the settlement set forth in the Agreement is in the best
2 interest of the Class Members. Decl. Nordrehaug, ¶ 23.

3 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
4 capable advocacy on both sides. The Parties were represented by experienced and capable counsel who
5 zealously advocated their positions. Accordingly, “[t]here is likewise every reason to conclude that
6 settlement negotiations were vigorously conducted at arms’ length and without any suggestion of undue
7 influence.” *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. at 1392.

8 **2. The Settlement Has No "Obvious Deficiencies" and Falls Well Within**
9 **the Range for Approval**

10 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
11 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
12 receive payment according to the same formula. (Agreement at ¶ III(C)(2).)

13 The calculations to compensate for the amount due to the Settlement Class Members at the time
14 this Settlement was negotiated were calculated by Plaintiff’s expert, DM&A, in advance of mediation.
15 Decl. Nordrehaug, ¶6. For the individuals whose claims are at issue in this Action, Plaintiffs analyzed
16 the data for class members and determined the potential maximum damages for the viable class claims.
17 Plaintiff determined that the maximum potential overtime damages were \$20.5 million, the and the meal
18 and rest period damages were estimated to be \$8.5 million, and the wage statement penalties were
19 calculated to be \$4.2 million. In total, these claims have a maximum value of \$33.2 million.

20 Consequently, the settlement of \$8,000,000 represents approximately 24% of the value of the
21 potential maximum damages and penalties at issue in this case at the time this Settlement was
22 negotiated, assuming these amounts could all be proven as collectable at trial. Given the amount of the
23 settlement as compared to the potential value of all claims includes interest and penalties in this case,
24 the settlement is most certainly fair and reasonable.³ Clearly, the goal of this litigation has been met.

25
26 ³ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
27 approving settlement which represented “roughly one-sixth of the potential recovery”); *Stovall-Gusman*
28 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
where “the proposed Total Settlement Amount represents approximately 10% of what class might have
been awarded had they succeeded at trial.”)

Decl. Nordrehaug, ¶6.

Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendants present serious threats to the claims of the Plaintiff and the other Class Members. Defendants asserted that Defendants' practices complied with all applicable Labor laws. For example, Defendants contend that all employee bonus compensation was properly included in the overtime calculation, and that the Village Bonus does not fall within the flat-sum bonus rule announced in *Alvarado v. Dart Container Corporation of California*, 4 Cal. 5th 542 (2018). Defendants also contend that the written meal and rest period policies fully complied with California law and that Defendants' electronic timekeeping system identifies meal period exceptions and allows the teammates to report involuntary meal period exceptions, such as late, short or missed meal periods which ensures the teammates receive premium pay. Finally, Defendants argue that while hard-copy wage statements omitted some detail, the electronic paystubs were fully compliant. Defendant could also argue that the recent Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiffs' claims, on liability, value, and class certifiability as to the meal and rest period claims. Defendants also argue that they acted in good faith and without willfulness, which if accepted would negate the claims for waiting time penalties. In fact, under the current state of the law, it is questionable whether these penalties could be awarded for the meal and rest period violations. If successful, Defendants' defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiffs believes that these defenses could be overcome, Defendants maintain these defenses have merit and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable to obtain class certification and thereby not recover on behalf of any employees other than themselves. Defendants argued that the individual experience of each individual varied with respect to the claims. Defendants could also contest class certification by arguing injury and good faith were case by case determinations that precluded class certification. Plaintiff is aware of cases where class certification of similar claims was denied. See e.g. *Ferguson v. Randy's Trucking, Inc.*, 2016 U.S. Dist. LEXIS 32719 (E.D. Cal. 2016); *Santos v. TWC Admin. LLC*, 2014 U.S. Dist. LEXIS 199358 (C.D. Cal. 2014). Finally,

1 even if class certification was successful, as demonstrated by the California Supreme Court decision in
2 *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for
3 a class wide recovery even where the class has been certified. While other cases have approved class
4 certification in wage and hour claims, class certification in this action would have been hotly disputed
5 and was by no means a foregone conclusion. Decl. Nordrehaug, ¶ 25.

6 After arm's length negotiations between experienced and informed counsel, the Parties
7 recognized the potential risks and agreed on the settlement of \$8,000,000. As the federal court recently
8 held in *Glass*, where the parties faced uncertainties similar to those here:

9 In light of the above-referenced uncertainty in the law, the risk, expense, complexity, and
10 likely duration of further litigation likewise favors the settlement. Regardless of how this
11 Court might have ruled on the merits of the legal issues, the losing party likely would
12 have appealed, and the parties would have faced the expense and uncertainty of litigating
13 an appeal. "The expense and possible duration of the litigation should be considered in
14 evaluating the reasonableness of [a] settlement."

15 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
16 (9th Cir. 2000)).

17 3. The Settlement Does Not Improperly Grant Preferential Treatment To Class 18 Representatives or Segments Of The Class

19 The relief provided in the settlement will benefit all members of the Class. The settlement does
20 not grant preferential treatment to Plaintiffs or segments of the Class in any way. Payments to the Class
21 Members are all determined under a neutral methodology. All Class Members will receive the same
22 opportunity to participate in and receive payment through a neutral formula that is based upon the weeks
23 worked and on the service charges earned or received by that individual. Decl. Nordrehaug, ¶4.

24 Plaintiffs will apply to the Court for Class Representative Service Payments in consideration for
25 their service and for the risks undertaken on behalf of the class. (Agreement at ¶ III(B)(1).) Plaintiffs
26 performed their duty admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. At this stage,
27 the requested service award is well within the accepted range of awards for purposes of preliminary
28 approval. See e.g. *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018)
(awarding \$12,500 where average class member payment was \$351); *Holman v. Experian Info.
Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000 service award
where class member recovery was \$375); *Rausch v. Hartford Fin. Servs. Grp.*, 2007 U.S. Dist. LEXIS

1 14740, 2007 WL 671334 (D. Or. 2007) (approving award of \$10,000 where class member recoveries
2 were as little as \$150); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal.
3 Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs in overtime class action); *Glass*
4 *v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. Jan. 27 2007) (awarding \$25,000 service award
5 in overtime class action and a pool of \$100,000.00 in enhancements). As explained in *Glass*, service
6 awards are routinely awarded to class representatives to compensate the employees for the time and
7 effort expended on the case, for the risk of litigation, for the fear of suing an employer and retaliation
8 there from, and to serve as an incentive to vindicate the statutory rights of all employees. 2007 WL
9 221862 at *16-17.

10
11 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit Preliminary Approval Of The Settlement**

12 The stage of the proceedings at which this settlement was reached also militates in favor of
13 preliminary approval and ultimately, final approval of the settlement. Class Counsel has conducted a
14 thorough investigation into the facts of the class action. Class Counsel began investigating the Class
15 Members' claims before this action was filed. Class Counsel performed formal discovery and engaged
16 in a thorough review and analysis of the relevant documents and data. Class Counsel was also
17 experienced with the claims at issue here, as Class Counsel previously litigated and settled similar
18 claims in other actions. Accordingly, the agreement to settle did not occur until Class Counsel possessed
19 sufficient information to make an informed judgment regarding the likelihood of success on the merits
20 and the results that could be obtained through further litigation. Decl. Nordrehaug at ¶28.

21 Based on the foregoing data and their own independent investigation and evaluation, Class
22 Counsel is of the opinion that the settlement with Defendants for the consideration and on the terms set
23 forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light
24 of all known facts and circumstances, including the risk of significant delay, defenses asserted by
25 Defendant, and numerous potential appellate issues. There can be no doubt that Counsel for both parties
26 possessed sufficient information to make an informed judgment regarding the likelihood of success on
27 the merits and the results that could be obtained through further litigation. Decl. Nordrehaug ¶29.

28 In *Glass*, the Northern District of California granted final approval of an overtime wage action

1 although in *Glass* no formal discovery had been conducted prior to the settlement:

2 Here, no formal discovery took place prior to settlement. As the Ninth Circuit has
3 observed, however, '[i]n the context of class action settlements, 'formal discovery is not
4 a necessary ticket to the bargaining table' where the parties have sufficient information
5 to make an informed decision about settlement.'"

6 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*,
7 213 F.3d at 459).

8 Here, Class Counsel was in an equal position to evaluate the fairness of this settlement because
9 Class Counsel had the same sufficient information, as well as independent investigations and due
10 diligence to confirm the accuracy of the information supplied by Defendants.

11 **V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES ONLY**

12 Plaintiffs contend that the proposed settlement meet all of the requirements for class certification
13 under California Code of Civil Procedure §382 as demonstrated below, and therefore, the Court may
14 appropriately approve the Class as defined in the Agreement. This Court should conditionally certify
15 the Class for settlement purposes only, defined as follows:

16 All individuals who are or previously were employed by one or more of the Defendants
17 in California at any time during the Class Period and who were classified as non-exempt.

18 (Agreement at ¶ I(B).)

19 The Class Period is the period from March 8, 2012 through May 6, 2019. (Agreement at ¶ I(I).)

20 **A. California Code of Civil Procedure § 382**

21 Plaintiffs seek certification of this Class for settlement purposes under California Code of Civil
22 Procedure § 382. The California Supreme Court has summarized the standard for determining whether
23 class certification is appropriate as follows:

24 Code of Civil Procedure Section 382 authorizes class actions "when the question is one
25 of a common or general interest, of many persons, or when the parties are numerous, and
26 it is impracticable to bring them all before the court...." The party seeking certification
27 has the burden to establish the existence of both an ascertainable class and a well-defined
28 community of interest among class members. (*citations omitted*). The "community of
interest" requirement embodies three factors: (1) predominant common questions of law
or fact; (2) class representatives with claims or defenses typical of the class; and (3) class
representatives who can adequately represent the class.

Sav-On Drug Stores, Inc. v. Superior Court, 34 Cal. 4th 319, 326 (2004).

While Defendants reserve all rights to dispute that the Plaintiffs can satisfy these requirements,

1 the Parties agree that Defendants will not dispute that these requirements may be satisfied in this case
2 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
3 settlement only.

4 **B. The Proposed Class Is Ascertainable and Numerous**

5 Plaintiffs bring this action on behalf of a class of employees during the applicable Class Period.
6 Plaintiffs assert that all of these individuals are ascertainable because the class members can readily be
7 determined through examination of Defendants' files. Given that the class consists of approximately
8 17,000 members, Plaintiffs maintain that numerosity is clearly satisfied. *See Bowles v. Superior Court*,
9 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126
10 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, Plaintiff
11 asserts that the 17,000 current and former employees that comprise the class can be identified based on
12 Defendants' records and are sufficiently numerous for class certification. Decl. Nordrehaug at ¶30.

13 **C. Common Issues of Law and Fact Predominate**

14 Predominance of common issues of law or fact does not require that the common issues be
15 dispositive of the entire controversy or even that they be dispositive of all liability issues. 1 *Newberg*
16 *on Class Actions*, Section 4.25 at 4-82, 4-83 (1992). "Predominance is a comparative concept, and 'the
17 necessity for class members to individually establish eligibility and damages does not mean individual
18 fact questions predominate.'" *Sav-On*, 34 Cal. 4th at 334.

19 Commonality exists if there is a predominant common legal question regarding how an
20 employer's policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
21 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its
22 drivers.") Whether the Plaintiff is likely to prevail on their theory of recovery is irrelevant at the
23 certification stage since the question is "essentially a procedural one that does not ask whether an action
24 is legally or factually meritorious." *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

25 Here, Plaintiffs contend that common questions of law and fact are present, and specifically the
26 common questions of whether the Defendants failed to properly calculate the "regular rate" for purposes
27 of overtime, whether the Defendants failed to provide meal and rest periods, whether the wage
28 statements were inaccurate, and whether Class Members are entitled to damages and penalties as a result

1 of these practices. Decl. Nordrehaug, ¶30. Defendants dispute that common questions predominate, but
2 will not oppose such a finding for purposes of this settlement only.

3 **D. The Claims of the Plaintiffs Are Typical of the Class Claims**

4 The typicality requirement requires the Plaintiffs to demonstrate that the members of the class
5 have the same or similar claims as the Plaintiffs. “The typicality requirement is met when the claims
6 of the Plaintiff arise from the same event or are based on the same legal theories.” *Tate v. Weyerhaeuser*
7 *Co.*, 723 F.2d 598, 608 (8th Cir. 1983). In *Hanlon v. Chrysler Co.*, 150 F.3d 1011, 1020 (9th Cir. 1998),
8 the Ninth Circuit held that “[u]nder the rule's permissive standards, representative claims are ‘typical’
9 if they are reasonably coextensive with those of absent class members; they need not be substantially
10 identical.”

11 In the instant case, Plaintiffs contend that there can be little doubt that the typicality requirement
12 is satisfied. The Plaintiffs, like every other member of the Class, worked for Defendant as a non-exempt
13 employee during the Class Period. Plaintiffs contend that, like every other member of the Class, they
14 were subject to the same practices and policies of Defendants and are all subject to the same defenses.
15 Thus, Plaintiffs asserts that the claims of the Plaintiffs and the Class Members arise from the same
16 course of conduct by the Defendants, involve the same employment policies and practices of
17 Defendants, and are based on the same legal theories. Decl. Nordrehaug at ¶30. For purposes of
18 settlement, Plaintiffss assert that the typicality requirement is met as to the common issues presented in
19 this case. Defendants does not oppose a finding that these claims are typical for this proposed class, for
20 purposes of this settlement only.

21 **E. The Class Representation Fairly and Adequately Protected the Class**

22 Plaintiff contend that the Class Members are adequately represented here because Plaintiffs and
23 representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
24 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is met
25 here. First, Plaintiffs are well aware of their duties as the representatives of the Class and have actively
26 participated in the prosecution of this case to date. They effectively communicated with counsel,
27 provided documents to counsel and participated in discovery, investigation and negotiations in the
28 Action. Second, Plaintiffs retained competent counsel who is experienced in employment class actions

1 and who have no conflicts. Decl. Nordrehaug at ¶ 31. Third, there is no antagonism between the
2 interests of the Plaintiffs and those of the Class. Both the Plaintiffs and the Class Members seek
3 monetary relief under the same set of facts and legal theories. Defendants dispute that the adequacy
4 requirement is satisfied, but will not oppose such a finding for purposes of this settlement only.

5 **F. The Superiority Requirement Is Met**

6 To certify a class, the Court must also determine that a class action is superior to other available
7 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
8 common issues will reduce litigation costs and promote greater efficiency, a class action may be superior
9 to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996).

10 As courts have previously observed:

11 Absent class treatment, each individual plaintiff would present in separate, duplicative
12 proceedings the same or essentially the same arguments and evidence, including expert
13 testimony. The result would be a multiplicity of trials conducted at enormous expense
14 to both the judicial system and the litigants. “It would be neither efficient nor fair to
15 anyone, including defendants, to force multiple trials to hear the same evidence and
16 decide the same issues.”

17 *Sav-On*, 34 Cal. 4th at 340, citing *Boggs v. Divested Atomic Corp.*, 141 F.R.D. 58, 67 (S.D. Ohio 1991).

18 Here, Plaintiffs contend that a class action is the superior mechanism for resolution of the claims
19 as pled by the Plaintiffs. While Defendants dispute that class treatment is superior, it will not dispute
20 a finding of superiority in this action for purposes of this settlement only.

21 **VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE**

22 The Court has broad discretion in approving a practical notice program. The Parties have agreed
23 upon procedures by which the Class Members will be provided with written notice of the Settlement
24 similar to that approved and utilized in hundreds of class action settlements. In accordance with the
25 Agreement, Defendants will provide to the Settlement Administrator an electronic database containing
26 each Class Member's Class Data, which consists his or her name; last-known mailing address; Social
27 Security number; his or her employee identification number; his or her dates of employment; and his or
28 her number of workweeks worked during the Class Period as a Class Member. (Agreement at ¶¶ I(E)
and III(E)(2).) Within 14 days after receiving the Class Data, the Settlement Administrator will mail
the Class Notice Packets to all Class Members via first-class regular U.S. Mail using the most current

1 mailing address information available. (Agreement at ¶ III(E)(2).)

2 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
3 and to be approved by the Court, includes all relevant information. (See Exhibit "A" to the Agreement.)

4 The Class Notice will include, among other information: (i) information regarding the Action; (ii) the
5 impact on the rights of the Class Members if they do not opt out; (iii) information to the Class Members
6 regarding how to opt out and how to object to the Settlement; (iv) the estimated Settlement Share for
7 each of the Class Members; (iii) the amount of attorneys' fees and litigation expenses to be sought; (v)
8 the amount of the Plaintiffs' service award request; and (vi) the anticipated expenses of the Settlement
9 Administrator. Decl. Nordrehaug at ¶32.

10 The Class Notice will state that the Class Members shall have forty-five (45) days from the date
11 that the Notice is mailed to them to request exclusion or to submit an objection. (Agreement at ¶
12 III(E)(3).) Class Members shall be given the opportunity to object to the terms of the Agreement and/or
13 requests for attorneys' fees and costs and to participate at the Final Approval Hearing, in accordance
14 with the instructions set forth in the Class Notice. Class Members who do not opt out will automatically
15 receive a payment of their Settlement Share. This notice program was designed to meaningfully reach
16 the Class Members and it advises them of all pertinent information concerning the settlement. Decl.
17 Nordrehaug at ¶32. The mailing and distribution of the Class Notice satisfies the requirements of due
18 process, and is the best notice practicable under the circumstances and constitutes due and sufficient
19 notice to all persons entitled thereto. The Class Notice provides information on the terms and provisions
20 of the settlement; the benefits that settlement provides for Class Members; the date, time and place of
21 the Final Approval Hearing; and the procedure and deadlines for submitting comments, objections and
22 requests for exclusion and complies with Rules of Court 3.766 and 3.769(f).

23 **VII. CONCLUSION**

24 Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement and
25 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
26 fairness hearing for a date that is one hundred twenty (120) days from the date of Preliminary Approval.

27 Dated: July 18, 2019

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
By: /s/ Norman B. Blumenthal
Norman B. Blumenthal, Esq.

Kyle R. Nordrehaug, Esq.
Attorney for Plaintiffs

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